In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-325

DAVID LEO STECHER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Texas, petitioner and two co-defendants, Collins and Scheffer, were convicted of having knowingly imported, transported and concealed cocaine, and having conspired to do so, in violation of 21 U.S.C. (1964 ed.) 174. The court of appeals, in a lengthy opinion (Pet. App. A1-A17), affirmed petitioner's conviction but reversed the convictions of Collins and Scheffer on the ground that

the government had used illegally obtained evidence at trial. The evidence was obtained from a warrantless search of Scheffer's home, in which Collins was a guest at the time; petitioner was not present at the time of the search and had no interest in the premises or the property seized. The court of appeals held that in these circumstances petitioner had no standing to challenge the search, which it deemed unlawful, and thus could not object to the use of the seized evidence at trial (Pet. App. A16-A17).

Petitioner contends that he should be granted standing because the convictions of his co-defendant were reversed as a result of the search. This claim is fully answered, as the opinion below notes, by this Court's rulings in *Jones* v. *United States*, 362 U.S. 257, and *Alderman* v. *United States*, 394 U.S. 165. That the evidence allegedly seized illegally was used to buttress the credibility of a government witness does not dispense with the need for standing. Despite the framing of the question presented (Pet. 3-4), the real issue is whether any of petitioner's constitutionally protected interests were infringed by the search. Under settled principles, they were not. Thus, the not unusual circumstances that the seized evidence also corroborated prosecution testimony does not create standing.[1]

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[1] In addition, we have not acquiesced in the holding of the court below that the failure to secure a search warrant rendered the search invalid; we have filed a petition for rehearing with suggestion for rehearing *en banc* of the decision reversing the convictions of Collins and Scheffer.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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